DOCUMENT RESUME

ED XXX 741 EC XXX XXX

TITLE	Special Education Mediation in Idaho: "Managing Parent and School Conflict through Effective Communication."
INSTITUTION	Idaho State Board of Education, Boise.
SPONS AGENCY	Department of Education, Washington, DC.
PUB DATE	Sep 96
NOTE	11p.
CONTRACT	H327A[illegible]
PUB TYPE	Guides - Non-Classroom (055)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Conflict Resolution; *Disabilities; Elementary Secondary Education; *Parent School Relationship; *Special Education; State Standards
IDENTIFIERS	*Idaho; *Mediation

ABSTRACT

This booklet provides Idaho guidelines for the mediation process to resolve conflicts between parents and schools regarding the educational program for a special education student. After an outline of the mediation process, mediation is compared to the impartial due process hearing and the complaint investigation process. Principles of the process are then specified. Other considerations briefly discussed or outlined are the appointment of a mediator, the mediator role, the roles of parents and schools, recommended preparation for the mediation session, and the stages of the mediation process. Nine policies regarding mediation are listed, including: disputes involving weapons, drugs or physical/sexual abuse are not acceptable cases for mediation; no recordings of the mediation proceedings are made; and each party should designate a person with the authority to make final resolution decisions. (DB)

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SPECIAL EDUCATION
MEDIATION
in IDAHO

"Managing Parent and School Conflict Through Effective Communication"

Anne C. Fox, Ph.D.
State Superintendent of Public Instruction
Idaho State Department of Education
September, 1996

EC 305 612

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Contents

Introducing Mediation 3

Comparing Systems 4

Special Education Mediation Process 5

Mediation in Idaho 5

Requesting Mediation 5

Appointment of a Mediator 6

The Mediator 6

Roles of Parents and Schools 7

Prepare for the Mediation Session 7

The Mediation Session 8

Policies 9

Conclusion 10

Introducing Mediation

If conflict occurs between parents and schools regarding the educational program for a special education student, mediation may provide a non-adversarial alternative to resolve disputes.

Mediation is a structured, yet informal, voluntary process in which an impartial third party mediator helps parents and schools, who are experiencing conflict, to reach a suitable agreement. Mediation builds positive working relationships, encourages mutual understanding, and helps parents and schools focus on their common interest -- the student.

M *utual agreement by parents and schools to mediate*

E *conomically sound choice for all parties*

D *ecisions are made by the conflicting parties*

I *ndividuals appointed to mediate are experienced and have knowledge of special education law*

A *ctions will be jointly determined*

T *ime needed for mediation takes less than a day*

I *dentifies the student's educational needs*

O *pen communication is the key to reaching agreement*

N *eutral third party mediates the dispute*

Comparing Systems

Mediation	Impartial Due Process Hearing	Complaint Investigation
Non-adversarial	Adversarial	Adversarial
Informal	Formal	Formal
Confidential	Confidential	Confidential
No cost to parties	Costly for schools	Could be costly
Supports mutual problem-solving	Solution ordered by hearing officer	Investigator makes final determination
Mediation session less than a day	Hearing may last several days	Process may take several weeks
Supports open communication	Communication stifled	Communication with investigator
Agreements made jointly	Law based solution	Determined by allegations
If no agreement reached, can pursue other systems	Decision binding, however, can be appealed to state or federal court	Decision can be appealed to U.S. Department of Education

Following a request for mediation, the State Department of Education (SDE) makes every effort to complete the process within fourteen (14) days. Federal regulations have established a forty-five (45) day time line for due process hearings, however, legal procedures and unforseen circumstances may cause delays. Formal complaints are investigated and resolved with sixty (60) days.

The Special Education Mediation Process is:

VOLUNTARY for parents and school personnel and is not required by law;

CONFIDENTIAL, thus encouraging all participants to speak freely;

A **NO-COST SERVICE** to parents and schools provided by the Idaho SDE; and

An **ALTERNATIVE** which does not affect the status of a due process hearing or formal complaint.

Mediation in Idaho:

- May resolve disputes regarding the identification, evaluation, educational placement or related services for students with disabilities;
- Clarifies areas of agreement and disagreement;
- Can be scheduled prior to, or concurrent with, a request for a due process hearing; and
- Fosters better relationships between parents and schools.

Requesting Mediation

A telephone or written request for mediation may be made to the SDE by the parents of a child with a disability, a legal guardian, surrogate parent or the school district. A request for mediation may occur when:

- Parents and/or schools are unwilling or unable to modify their position without outside assistance;
- Parents and schools, after making a good faith effort, face an impasse in attempting to resolve the conflict; and
- A request for a due process hearing has been made by either the parents or the school district, or the parents have filed a formal complaint.

Appointment of a Mediator

The SDE maintains a list of qualified mediators. When both parties in a dispute agree to mediate, every attempt will be made by the SDE to appoint a mediator within three (3) working days of the request. The time, date and place of the mediation will be coordinated by the SDE.

The Mediator

A ***mediator*** is a neutral third party trained in communication, problem solving, negotiation skills and specific mediation techniques, who acts as a facilitator to assist parents and schools in resolving conflicts. The mediator:

- ★ Works with the parties to determine who will attend the session;
- ★ Educates the parties about the mediation process;
- ★ Encourages open and honest communication;
- ★ Establishes the ground rules for all parties to follow;
- ★ Guides the process;
- ★ Ensures that each party is heard;
- ★ Rephrases information and summarizes positions;
- ★ Clarifies issues of law and regulation; and
- ★ Facilitates the writing of the agreement.

Roles of Parents and Schools

Parents and school personnel are the active participants in the mediation process. It is in the best interests of all parties, including the student, to explore mediation as a means to an informal resolution of the conflict. The student's educational future is at stake. If these factors are kept in mind from the onset of mediation, success will more likely occur.

- Approach mediation in good faith.
- Be willing to give at least a day to the process.
- Without interruption, present your view of the issues and listen to the opinions of the other side.
- If needed, meet separately with the mediator.
- Seek clarification of the discussion or materials.
- Deal with issues, not personalities.
- Remember, disputing parties have complete decision-making power.

Prepare for the Mediation Session

★ Keep your schedule free the entire day of the mediation.

★ Put aside personality conflicts and center on the educational interests of the student.

★ Be familiar with all documents related to the dispute, including the Individual Education Program (IEP).

★ Organize your information and materials.

★ Ask yourself these questions:
  What do I/we want to accomplish?
  What do I/we want the other party to do?
  Are there alternative ways to resolve the conflict?

★ Be honest and willing to listen.

★ Be open to alternatives.

The Mediation Session

Every mediator has his/her own personal style of conducting a mediation. Mediation may include the following stages:

1. **Introduction:** The mediator will explain the process, set the ground rules for all parties and respond to questions.

2. **Identification of Positions:** Each party will have an opportunity, without interruption, to identify positions and share information. The mediator may seek additional data or summarize the issues.

3. **Expression of Interests:** At this stage, the mediator helps the parties to identify their interests (those factors underlying their positions). Goals, needs, desires, hopes and fears are expressed, explored and clarified.

4. On occasion, positions and underlying interests may not be clear. Opportunity is provided for each party to **"caucus"** with the mediator for the purpose of sharing information or seeking clarification about the issues. The mediator will not disclose information from caucus sessions without consent.

   A **"recess"** may be requested by any participant if emotions run high during a mediation session. This "cooling off" period provides an opportunity for all parties to communicate separately, rethink their strategies and absorb what has transpired.

5. **Creating Alternatives:** Once the basic positions and underlying interests have been identified, discussed and clearly understood by all parties, the mediator will assist the

parties in developing options and making decisions for resolving the conflict. At any time during an open session or in a caucus, either party may propose solutions.

6. **Developing and Writing a Plan:** The ultimate goal of mediation is to seek a written resolution to the conflict. The parties establish the terms of the agreement. The mediator writes the final document, which is signed by the parents, school representatives and mediator. Each party retains a copy of the agreement. If an agreement involves making changes to a student's IEP, a Child Study Team meeting should be convened as soon as possible.

7. **Implementation:** In order for the final agreement to work effectively, its provisions must be implemented. The signed document demonstrates a commitment by both parties to abide by the conditions of the agreement. Ultimately, it is the responsibility of the parties to fulfill their obligations.

Mediation Policies

1. Disputes involving weapons, drugs or physical/sexual abuse are not acceptable cases for mediation.

2. No video or tape recording of the mediation proceedings will be made.

3. Each party should designate a person who has the authority to make final resolution decisions.

4. Since mediation is a non-adversarial process which offers the parties the opportunity to communicate directly with

each other, legal representation during a mediation session will be strongly discouraged.

5. Except for the signed agreement and mediator evaluation forms, all notes or records kept will be destroyed at the conclusion of the mediation session.

6. The mediator will provide signed copies of the agreement to each party and the SDE.

7. The mediator will be excluded from subsequent actions -- complaint investigations, due process hearings, or legal proceedings.

8. A due process hearing, requested prior to mediation, may be canceled by mutual consent. Caution must be taken to ensure that all legal time frames are followed.

9. If for any reason the mediation fails, the mediator will provide each party with a statement certifying that the mediation was unsuccessful.

Conclusion

Mediation encourages parents and schools to work together in a partnership to resolve conflicts. The process is a suitable alternative to a costly and stressful due process hearing or formal complaint. Successful mediation reinforces educational opportunities and services for special education students.

For additional information, contact:

Procedural Safeguards Specialist
State Department of Education
Special Education Section
P.O. Box 83720
Boise, Idaho 83270-0027
Telephone: (208) 332-6914

This mediation booklet was developed by SDE Procedural Safeguards Specialist, Larry E. Streeter. Special recognition is extended to the following individuals who assisted with this project.

SDE: Nolene Weaver, Jane Brennan, Pamela Schmidt, Eleanor Ritter, Jim Smith, Lyn Tozer and Mel Mangum

Mediators: Jennifer Johnson, Wenden Waite

Boise School District: Vicki Simmons

National Federation of the Blind of Idaho: Ramona Walhof

Lewiston Independent School District: Mont Hibbard

Idaho Parents Unlimited, Inc. (I-PUL): Staff

Resources for the Blind of Idaho: Kyrsten Bell

Comprehensive Advocacy, Inc. (Co-Ad): James Baugh

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This publication is sponsored in part by funds from Grant Award Number H027A40088 from the U.S. Department of Education. Presenters' views do not necessarily represent those of the U.S. Department of Education.